

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 249 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

ASHOK D KOTHARI

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 249 of 2001
MR DM AHUJA for Petitioner No. 1-2
MR M A Bukhari, Addl.PUBLIC PROSECUTOR for Respondent No. 1
RULE SERVED for Respondent No. 2-3
MR J G Shah, Sr. Advocate with Mr HARSHAD J SHAH
and Mr Praful J Bhatt for Respondent No. 4
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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 21/11/2002

ORAL JUDGEMENT

The petitioners herein have preferred this petition under Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code'). The petitioners have, earlier, prayed that this Court should issue appropriate writ, order or direction for quashing and setting aside the FIR being C.R. No.16/2001 dated 13.3.2001 filed by respondent no.4 at Mavana police station, Meerut (U.P.). It is also prayed by the petitioners that the aforesaid proceedings of investigation may be ordered to be transferred from Mavana police station to the police station at Ahmedabad. It is further prayed that the police investigating Officer of the said police station be restrained from investigating the said offence. During the course of pendency of the petition, the investigation was concluded and charge-sheet was filed and, therefore, the petitioners have amended the petition and have prayed for quashing the said criminal case and for transfer of the said criminal case No.968/2001 pending before the learned Judicial Magistrate First Class, Mavana, Meerut (U.P.) to the Magisterial Court at Ahmedabad.

2. The facts of the case of the petitioner may be briefly stated as follows:

There was some transaction between the petitioners and respondent no.4 with respect to sale and purchase of papers. It is the case of the petitioners that some amount was due to the petitioners and, therefore, with a view to pay the said due, respondent no.4 issued some cheques in favour of the petitioners. It is also alleged that the said cheques were dishonoured and, therefore, a complaint was filed by the petitioners against respondent no.4 for offence punishable under section 138 of the Negotiable Instruments Act for an amount of Rs.1,32,00,000/- (Rs.One crore, thirty two thousand only) and before filing the said complaint, the petitioners were required to issue notice to respondent No.4 and, therefore, appropriate notice was issued. At that time, respondent no.4 filed FIR before Mavana police station, Meerut stating that those cheques have been misused and forged and, therefore, the investigation was undertaken by the Investigating Police Officer in the said FIR filed by respondent No.4 before Mavana police station, Meerut. After completing the investigation, the said police station filed charge sheet which has been registered as Criminal Case No.968/2001 before the Magisterial Court at Mavana, Meerut. The petitioners have come forward with this petition stating that the

said proceedings may be quashed and in the alternative, the said criminal case may be transferred from the Court at Mavana to Ahmedabad.

3. So far as the quashing of proceeding is concerned, it has been stated at the Bar by Mr D M Ahuja, learned Advocate for the petitioners that the petitioners do not press this relief as the petitioners may make appropriate prayer before appropriate court at appropriate time for appropriate relief. Therefore, this court is not required to consider the said prayer for quashing of the said FIR which has been resulted in filing of Criminal Case No.968/2001.

4. We are, therefore, here to confine the proceedings with respect to transfer of the Criminal Case No.968/2001 pending before the Judicial Magistrate First Class, Mavana to the Court at Ahmedabad.

5. The petitioners contend the following two grounds for obtaining such an order for transfer of the said criminal case. Therefore, the grounds at 'G' and 'H' at page no.18 of the petition may be reproduced hereunder:

"G. The petitioners further respectfully submit that respondent no.4 wants to bring pressure and force the petitioner to withdraw the criminal case filed by them before the learned JMFC, Ahmedabad (Rural). The petitioners craves leave to rely upon and refer the decision of the Hon'ble Supreme Court in the case of State of Haryana v. Bhajanlal, reported in 1992 SC 604. In view of this decision, the impugned complaint being CR No.16/2001 dated 13.3.2001 lodged by respondent no.4 at Mavana police station, Meerut, Dist. Meerut (U.P.), may kindly be quashed and set aside.

H. Even otherwise also the impugned complaint being CR No.16/2001 dated 13.3.2001 lodged by respondent no.4 at Mavana police station, Meerut, District Meerut (U.P.) is false, fabricated and is filed as a counter blast to the criminal case filed by the petitioners and hence the same may kindly be quashed and set aside."

It is the case of the petitioners that respondent no.4

wants to bring pressure and force the petitioners to withdraw the criminal case filed by them before the learned JMFC, Ahmedabad and, therefore, the said criminal case may also be transferred to Ahmedabad. It is further contended that even otherwise also the impugned complaint C.R. No.16/2001 dated 13.3.2001 lodged by respondent no.4 at Mavana police station is bogus, fabricated and counter blast to the criminal case filed by the petitioners and hence the same may be quashed and set aside.

6. On this point, arguments have been advanced by the learned Advocates for the parties and they have also cited certain citations in support of their arguments.

Mr D M Ahuja, learned Advocate for the petitioners submitted that since the FIR has been filed before the police station at Mavana, Meerut against the petitioners as a counter blast and with a view to bring pressure on the petitioners in order to force them to withdraw the criminal case filed by them before the learned Magistrate at Ahmedabad, the said case may be ordered to be transferred to the Court at Ahmedabad.

7. In support of his contention, Mr Ahuja, learned Advocate has relied upon a decision in the case of Navinchandra N Majithia v. State of Maharashtra & Ors., reported in (2000) 7 SC 640. There it was observed that the writ petition filed before the Mumbai High Court for quashing of the criminal complaint on the ground that it was false and it was filed with mala fide intention of causing harassment and putting pressure on the petitioner to reverse the transaction relating to transfer of company shares, which had entirely taken place at Mumbai. Alternative prayer made in the petition was for issuance of writ of mandamus to State of Meghalaya for transfer of the investigation to Mumbai police. There it was held that in view of the averments and allegations made in the petition, it was a fit case for passing an order for transfer.

8. In the present case, we find that though it has been alleged in ground 'G' that respondent no.4 has filed the aforesaid criminal complaint for bringing pressure and force the petitioners to withdraw the criminal case filed at Ahmedabad, it is also required to be seen that so far as the grounds are concerned, it is been mainly contended that the investigation undertaken was not just and proper and, therefore, the petitioners were not likely to get justice in the said matter. Now the investigation is over and the charge sheet has also been

filed and it has been registered as Criminal Case No.961/2001.

9. No allegation has been made against the court concerned or any other person after the charge-sheet was filed. Therefore, it can be said that there is no ground shown or proved for transferring the criminal case from one court to another court. The only contention raised in ground 'G' at page 18 is that respondent no.4 wants to bring pressure and force the petitioners to withdraw the criminal complaint filed by them before the Court at Ahmedabad. After all respondent no.4 has simply filed FIR before the police station concerned and the concerned I.O. has undertaken the investigation and has filed charge sheet before the court concerned. It, therefore, cannot be said that the FIR was totally groundless and, therefore, it cannot be said that the said FIR was filed with a view to bring pressure and force the petitioner to withdraw the criminal complaint pending at Ahmedabad.

10. Mere allegation of pressure or force would not be enough to give rise to jurisdiction of a court for transferring a case from one court to another. The said allegation has to be founded on the basis of some factual data. In the present case, we find that since the petitioners have filed petition at the stage of investigation, allegations were made against the Investigating Police Officer or Investigating Agency. No allegation has been made against the court or against any person who has now to deal with the criminal case against the present petitioner. Transfer of a case from one State to another cannot be ordered very lightly. A person coming to the court with such a prayer has to prove his grounds by making appropriate averments in the petition. On this aspect of the case, we can consider a decision of the Hon'ble Apex Court in the case of Mrs. Maneka Sanjay Gandhi v. Miss Rani Jethmalani, reported in AIR 1979 SC 468. It is pertinent to refer to the observations made in para 2 of the said judgment. With a view to complete the judgment, the same is reproduced hereunder:

"Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperilling from the point of view of public justice and its

attendant environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner's grounds on this touch-stone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances."

Even in the case of Dr. Ram Chander Singh Sagar & anr. v. State of Tamil Nadu and anr., reported in AIR 1978 SC 475, the Hon'ble Supreme Court has observed as follows:

If the petitioners are being directed to appear in a far-off court during investigatory stage, it is for them to move that court for appropriate orders so that they may not be tormented by long travel or otherwise teased by judicial process. If justice is denied there are other redresses, not under Section 406, though it is unfortunate that the petitioners have not chosen to move that court to be absolved from appearance until necessitated by the circumstances or the progress of the investigation. To come to this Court directly seeking an order of transfer is travelling along the wrong street. We are sure that if the second petitioner is ailing as is represented, and this fact is brought to the notice of the Court which has directed her appearance, just orders will be passed in case there is veracity behind the representation. We need hardly say courts should use their processes to the purpose of advancing justice, not to harass parties. Anyway, so far as the petition for transfer is concerned, there is no merit we can see and so we dismiss it."

11. In the instant case we find that there is a bare allegation that the criminal complaint has been filed with a view to bring pressure to withdraw the criminal case of the petitioners. It is not a case that some hardship is likely to be caused to the petitioners for conducting the trial of the said criminal case before the Court at Mavana police station. It is also not the case of the petitioners that their interest will not be properly safeguarded if they are required to attend the court at Mavana. It is also not their case that they

will not be able to effectively conduct the case if they are required to attend the case at Mavana. It is also not their case that it would be inconvenient or difficult to go to the court at Mavana to attend the proceedings of the said case as and when the matter is posted for hearing.

12. At the same time, Mr J G Shah, learned Advocate for the contesting respondent has also contended that in a criminal case, it is not always necessary for the accused person to go to the court to attend the same in person. He also argues that the accused person can apply for permission to appear through his Advocate. It is well settled that even the plea of the accused can be recorded in his absence if his Advocate is prepared to give answer to the question of the Court. Even evidence of witness can also be recorded in absence of the accused, if the accused is permitted to remain present through his Advocate. It is further settled that even further statement of the accused under section 313 of the Code can also be recorded in absence of the accused provided the accused is permitted to appear through his advocate. Therefore, it cannot be said that the accused persons or the petitioners herein are required to frequently go to Mavana. At the same time, it is not the case of the petitioners that it would not be possible for them to go to the Court at Mavana very frequently or as and when the matter is fixed. Therefore, the question of inconvenience does not arise to any extent.

13. At the same time, the allegations made in grounds made in grounds 'G' and 'H' are very general in nature. They can be said to be vague. Criminal case cannot be transferred on the ground of general and vague averments. In that view of the matter, I am of the opinion that this cannot be treated to be a fit case for exercising writ jurisdiction for transfer of criminal case pending before the Judicial Magistrate First Class at Mavana (Meerut) to the Court at Ahmedabad.

14. For the foregoing reasons, I am of the opinion that there is no merit in the present petition and, therefore, the petition deserves to be dismissed. The present petition is accordingly ordered to be dismissed. Rule discharged.

21.11.2002 [D P Buch, J.]

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